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and Prime Administration, LLC

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

BRAD AVAKIAN, Commissioner of the
OREGON BUREAU OF LABOR AND
INDUSTRIES,

Plaintiff,

v.

OSWEGO LENDER, LLC, d/b/a OSWEGO
POINT APARTMENTS and **PRIME
ADMINISTRATION, LLC** d/b/a PRIME
GROUP,

Defendants.

Case No. 3:15-cv-01074-BR

DEFENDANTS' ANSWER AND DEFENSES
TO PLAINTIFF'S COMPLAINT

Defendants Oswego Lender, LLC, d/b/a Oswego Point Apartments, and Prime Administration, LLC, d/b/a Prime Group (collectively, "Defendants"), respond to plaintiff's complaint dated May 1, 2015, as set forth below. References to paragraphs in this answer are references to the numbered paragraphs in the complaint.

PARTIES TO THE ACTION

1. Answering paragraph 1, Defendants admit that Brad Avakian is the Commissioner of the Oregon Bureau of Labor and Industries ("BOLI") and that he has brought this action in his official capacity. Defendants further admit that BOLI is located at 800 NE Oregon Street, Suite 1045, Portland, Oregon, 97232, in Multnomah County. Defendants deny paragraph 1 to the extent that it suggests any liability on Defendants' behalf or that plaintiff or Greg Zagel are entitled to any damages under ORS 659A.885(9).

2. Answering paragraph 2, Defendants admit that BOLI has brought this suit on its own behalf and on behalf of Mr. Zagel based on Mr. Zagel's election of remedies under ORS 659A.870(4)(b). Defendants deny the remaining allegations of paragraph 2.

3. Defendants admit the allegations of paragraph 3.

4. Answering paragraph 4, Defendants admit that Oswego Lender, LLC, is a Delaware Limited Liability Company doing business in Oregon as Oswego Pointe Apartments ("Oswego Pointe"). Defendants further admit that Oswego Pointe is an apartment community located at 5033 Foothills Road Lake Oswego, Oregon, 97034. Defendants further admit that Oswego Lender, LLC's, registered agent is CT Corporation System, which is located at 388 State St., Suite 420, Salem, Oregon 97301. Defendants assert that whether Oswego Lender, LLC, is a "person" pursuant to ORS 659A.001(9)(a) and acts through its officers, agents, and employees are legal conclusions for which no answer is required. Defendants further assert that Prime Administration, LLC, is a Delaware Limited Liability Company doing business in Oregon as Prime Group, an entity that manages Oswego Pointe. To the extent not expressly admitted, defendants deny the allegations of paragraph 4.

5. Answering paragraph 5, Defendants admit that Mr. Zagel has been a resident of Oswego Pointe since August 2002. Defendants lack knowledge or information sufficient to admit or deny the remaining allegations of paragraph 5, and so deny them.

6. Answering paragraph 6, Defendants admit that Kim Novak, who was then the Community Manager of Oswego Pointe, received a letter from Mr. Zagel on June 26, 2010, about Tom Rainey, the contents of which speak for themselves. Defendants further admit that Mr. Rainey was, at the time, the part-time Activities Director for Oswego Pointe. To the extent not expressly admitted, Defendants deny the allegations of paragraph 6.

7. Answering paragraph 7, Defendants assert that, in response to Mr. Zagel's June 26, 2010, letter, Oswego Pointe and Prime Group immediately began an investigation of the concerns and Oswego Pointe's Resident Services and Claims Management Department ("RSD") sent plaintiff a letter asking for additional information so that Oswego Pointe and Prime could further investigate the situation. Defendants admit that on July 6, 2010, Mr. Zagel provided Ms. Novak with a letter thanking Ms. Novak for her "prompt and professional handling" of his concerns about Mr. Rainey, that his recent interactions with Mr. Rainey were "professional and polite," and that "I'm of the belief that the occurrences [sic] of the past shall not be repeated" and "I believe rectification thereof has transpired in good stead." The full contents of the letter speak for themselves.

8. Answering paragraph 8, Defendants admit that Oswego Pointe's RSD sent Mr. Zagel a letter dated July 6, 2010, that stated it appeared he was retracting his request for an investigation. The full content of the letter speaks for itself. This letter was signed by Daniel Yampolski. Defendants further admit that Mr. Zagel denied that he was retracting his statements and asserted that his complaint was "valid" and that he "was justified in reporting them." Mr. Zagel further stated that he was "totally" satisfied with the outcome of his complaint and he believed that Oswego Pointe "took swift and decisive action, and the problem stopped

IMMEDIATELY!" (Emphasis maintained.) To the extent not expressly admitted, Defendants deny the allegations of paragraph 8.

9. Answering paragraph 9, upon information and belief, Mr. Rainey's personal e-mail address is tjrainey1120@yahoo.com. To the extent not expressly admitted, Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 9, and so deny them.

10. Answering paragraph 10, upon information and belief, Mr. Rainey's personal e-mail address is tjrainey1120@yahoo.com. To the extent not expressly admitted, Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 10, and so deny them.

11. Answering paragraph 11, upon information and belief, Tom Rainey's personal e-mail address is tjrainey1120@yahoo.com. To the extent not expressly admitted, Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 11, and so deny them.

12. Answering paragraph 12, upon information and belief, Mr. Rainey's personal e-mail address is tjrainey1120@yahoo.com. To the extent not expressly admitted, Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 12, and so deny them.

13. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 13, and so deny them.

14. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 14, and so deny them.

15. Answering paragraph 15, Defendants admit that Oswego Pointe's RSD sent Mr. Zagel a letter dated September 12, 2011, and that the letter stated, in part, that "We also understand that you informed Management that there was no need to conduct an investigation acknowledging that you and Mr. Rainey were fine." Defendants further admit that the letter

asked Mr. Zagel for additional information so that Oswego Pointe could further investigate Mr. Zagel's claims. Defendants also admit that the letter informed Mr. Zagel that Oswego Pointe had received allegations that Mr. Zagel had made "fabricated statements against Mr. Rainey to Assistant Manager, Patrick Lechner." The complete contents of the letter speak for themselves. To the extent not expressly admitted, Defendants deny the allegations of paragraph 15.

16. Answering paragraph 16, Defendants admit that Mr. Zagel submitted a complaint to the Department of Housing and Urban Development ("HUD") dated September 14, 2011, the contents of which speak for themselves. To the extent not expressly admitted, Defendants deny the allegations of paragraph 16.

17. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 17, and so deny them.

18. Answering paragraph 18, Defendants admit that Mr. Zagel sent Oswego Pointe's RSD a letter dated October 28, 2011, the contents of which speak for themselves. To the extent not expressly admitted, Defendants deny the allegations of paragraph 18.

19. Answering paragraph 19, Defendants admit that Oswego Pointe's RSD sent Mr. Zagel a letter dated November 4, 2011, the contents of which speak for themselves. To the extent not expressly admitted, Defendants deny the allegations of paragraph 19.

20. Answering paragraph 20, Defendants admit that Mr. Zagel sent a letter dated November 10, 2011, to Oswego Pointe's RSD, raising concerns about Mr. Rainey. The full content of the letter speaks for itself. To the extent not expressly admitted, Defendants deny the allegations of paragraph 20.

21. Defendants deny the allegations of paragraph 21.

ADMISSIONS AND DENIALS

**FIRST CLAIM FOR RELIEF
(Housing Discrimination (Religion)—ORS 659A.421(2))**

22. Answering paragraph 22, Defendants incorporate their responses to paragraphs 1 through 26.

23. Defendants deny the allegations of paragraph 23.

24. Defendants deny the allegations of paragraph 24.

25. Defendants deny the allegations of paragraph 25.

26. Answering paragraph 26, Defendants understand that plaintiff is requesting such relief, but deny that plaintiff is entitled to injunctive relief. Defendants further deny the implication that Defendants have engaged in, are engaging in, or will engage in any violations of fair housing laws.

27. Defendants deny the allegations of paragraph 27.

28. Defendants deny the allegations of paragraph 28.

**SECOND CLAIM FOR RELIEF
(Housing Discrimination (Sexual Orientation)—ORS 659A.421(2))**

29. Answering paragraph 29, Defendants incorporate their responses to paragraphs 1 through 33.

30. Defendants deny the allegations of paragraph 30.

31. Answering paragraph 31, Defendants understand that plaintiff is requesting such relief, but deny that plaintiff is entitled to injunctive relief. Defendants further deny the implication that Defendants have engaged in, are engaging in, or will engage in any violations of fair housing laws.

32. Defendants deny the allegations of paragraph 32.

33. Defendants deny the allegations of paragraph 33.

THIRD CLAIM FOR RELIEF
(Assisting, Inducing and Inciting Another Person to Violate the State Fair Housing Act—ORS 659.421(2))

34. Answering paragraph 34, Defendants incorporate their responses to paragraphs 1 through 38.

35. Defendants deny the allegations of paragraph 35.

36. Answering paragraph 36, Defendants understand that plaintiff is requesting such relief, but deny that plaintiff is entitled to injunctive relief. Defendants further deny the implication that Defendants have engaged in, are engaging in, or will engage in any violations of fair housing laws.

37. Defendants deny the allegations of paragraph 37.

38. Defendants deny the allegations of paragraph 38.

39. Defendants deny that plaintiff is entitled to the relief sought in the prayer.

DEFENSES

FIRST DEFENSE
(Failure to State a Claim)

40. Plaintiff failed to state a claim upon which relief may be granted.

SECOND DEFENSE
(Statute of Limitations)

41. Plaintiff failed to commence one or more of his claims within the time allowed by statute.

THIRD DEFENSE
(Laches)

42. Plaintiff's claims and damages are barred in full or in part by the doctrine of laches.

FOURTH DEFENSE
(Legitimate Nondiscriminatory Reasons)

43. Defendants' actions were based on legitimate nondiscriminatory reasons.

FIFTH DEFENSE
(Immediate, Appropriate Corrective Action)

44. Defendants took immediate and appropriate corrective action regarding Mr. Zagel's complaints and are therefore not liable for any alleged discrimination or harassment.

SIXTH DEFENSE
(No Imputed Liability)

45. Defendants took reasonable care to prevent any forms of unlawful conduct, including without limitation, harassment and discrimination, by having policies prohibiting and procedures for reporting and investigating such conduct, and plaintiff unreasonably failed to take advantage of those policies and procedures. As a result, Defendants are not liable for the alleged discrimination or harassment.

SEVENTH DEFENSE
(Waiver or Release)

46. Plaintiff's claims and damages are barred in full or in part by the doctrines of waiver or release.

EIGHTH DEFENSE
(Estoppel)

47. Plaintiff's claims and damages are barred in full or in part by the doctrine of estoppel.

NINTH DEFENSE
(Unclean Hands)

48. Plaintiff's claims and damages are barred in full or in part by the doctrine of unclean hands.

TENTH DEFENSE
(Failure to Mitigate)

49. Defendants deny that plaintiff or Mr. Zagel is entitled to any damages; however, to the extent such damages are available, Mr. Zagel failed to mitigate those damages.

WHEREFORE, Defendants demand that the claims against them be dismissed with prejudice and that they be entitled to recover their attorney fees under ORS 659A.885 and ORS 20.017, their costs and disbursements, and any other relief that the court deems just and appropriate.

DATED this 23rd day of July, 2015.

MILLER NASH GRAHAM & DUNN LLP

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Administration, LLC, d/b/a Prime Group

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Defendants' Answer and Defenses to Plaintiff's Complaint on:

Mr. Erious Johnson
Sr. Assistant Attorney General
Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096
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Attorneys for Plaintiff

by the following indicated method or methods on the date set forth below:

- ☒ **CM/ECF system transmission.**
- ☐ **E-mail.** As required by Local Rule 5.2, any interrogatories, requests for production, or requests for admission were e-mailed in Word or WordPerfect format, not in PDF, unless otherwise agreed to by the parties.
- ☐ **Facsimile communication device.**
- ☐ **First-class mail, postage prepaid.**
- ☐ **Hand-delivery.**
- ☐ **Overnight courier, delivery prepaid.**

DATED this 23rd day of July, 2015.

/s/Naomi Levelle Haslitt

Naomi Levelle Haslitt, OSB No. 075857

Of Attorneys for Defendants Oswego
Lender, LLC, d/b/a Oswego Point
Apartments, and Prime Administration, LLC,
d/b/a Prime Group